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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re B.O., a Person Coming Under the  
Juvenile Court Law.

B212679  
(Los Angeles County  
Super. Ct. No. CK73637)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.O.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Anthony Trendacosta, Juvenile Court Referee. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of County Counsel, James M. Owens, Assistant County Counsel, for Plaintiff and Respondent.

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A.O. (mother) appeals from a jurisdictional order of the juvenile court, by which the court found true an allegation that mother's son, B.M.O., was a child described by Welfare and Institutions Code section 300, subdivision (b)(1).<sup>1</sup> After issuing the order, the court immediately terminated its jurisdiction in the case. Mother contends the sustained allegation was insufficient to support the court's jurisdictional findings, and there was no substantial evidence to support the court's factual findings.

### **FACTS AND PROCEDURAL HISTORY**

On July 10, 2008, police responded to a call from a neighbor who heard screaming in mother's apartment. When police arrived, mother refused to open the door, even though the police advised her that they would force the door open as they were responding to an emergency call. Police found M., then age 12, sitting on the roof of the apartment. M. told the officers he had gotten into an argument with mother over some chocolate powder M. had spilled on the floor. Mother continued to be uncooperative and would not allow either the officers or M. into the home, even though M. was barefoot and needed his shoes. The officers took M. into protective custody.

On July 15, 2008, the Los Angeles County Department of Children and Family Services (DCFS) filed a section 300 petition listing four counts, including an allegation pursuant to section 300, subdivision (b)(1), that mother had physically abused M. and failed to protect him.

In anticipation of the July 15, 2008, detention hearing, DCFS interviewed both mother and M. The DCFS social worker reported that she had difficulty obtaining an interview with mother because mother lived in an apartment building with a secured gate but no intercom. In other words, the social worker could not simply knock on the door. Mother had a condition that required her to communicate by telephone via a relay telephone, assisted by an operator. The social worker was finally able to communicate

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated. Because the minor is commonly called by his middle name, we refer to him throughout this opinion as "M."

with mother by relay telephone in this manner. Mother refused to be interviewed in her home but agreed to meet the social worker at the DCFS office. However, mother insisted that the interview be videotaped or recorded. The social worker explained that recording devices were not allowed. Mother announced that her attorney had advised her not to speak further with the social worker, and hung up the telephone.

The social worker interviewed a nurse from the County's Mental Health Emergency Unit who had responded to the home and was able to convince mother to let her into the apartment. The nurse (who asked that her name and contact information be kept confidential) reported that "[m]other's responses and/or behavior were reported to be somewhat unbalanced or unsound, and it was determined that it appeared that mother had a mental illness." The nurse reported that although mother did not fit the criteria for a section 5150 hold, it was not advisable to return M. to her care at that time.

The social worker was able to interview M. at the police station. M. stated that he and mother had gotten into an argument because he had spilled some chocolate powder on the kitchen floor. Mother was upset and told M. to clean up the powder right away. M. was confused and frustrated because he did not know whether to clean up the powder, tend to the water he was boiling to make coffee for mother, or wash the dishes. He got into an argument with mother and went up to the roof to get some fresh air.

M. also stated that most of his arguments with mother were "yelling matches," but sometimes the arguments got out of hand and the two ended up in "wrestling matches." These "wrestling matches" began after he and mother moved to Los Angeles two years before, and M. said he and mother only wrestled during "stressful situations, like what happened this morning with the chocolate powder." M. said that sometimes his arguments with mother "get a little more out of hand," such as an incident in February 2008 when he wrestled with mother over some spilt coffee grounds.

M. disclosed that he had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) at the age of seven or eight. He spent nine months in a group home where they gave him nine different pills to take. Mother visited him once a week but later took him out of the home. M. was not taking any medication at the present time.

M. was home-schooled through California Virtual Academies and appeared to be doing well. He was required to meet with his teacher only every 45 days.

After interviewing M. at the police station, the social worker proceeded to mother's home to conduct a home investigation. M. refused to allow the social worker into the home unless the social worker "promised not to say one word while she was in the home." The social worker interviewed mother via the telephone relay and explained what was involved in the home inspection. Mother appeared "defensive and/or defiant." Mother claimed M. needed counseling and suggested to the social worker that she (mother) needed neurological assistance for herself. Mother denied using any physical discipline on M. During the telephone relay portion of the interview, mother summoned police. The police officers waited for mother to open the door and assisted the social worker with the home investigation.

The social worker interviewed mother's cousin, G.M., as a possible caretaker for M. Mr. M. was not able to care for M. at that time, but stated he was "relieved" to learn M. had been detained, as he was concerned for M. Mr. M. said that mother had "clear anger management problems" and would take certain issues as far as they could go. He also described mother as "very manipulative" and "furiously protective of her son." Mother thought her son was a "genius" who was not being served by the "educational system."

DCFS obtained the family's child welfare history, which included 17 referrals in several Northern California counties, spanning the years 2000 through 2007, as well as a referral regarding the February 2008 incident in Los Angeles County. The referrals included allegations against mother for physical abuse, emotional abuse, caretaker absence and incapacity, and general neglect. Most often, the referrals were "evaluated out"; in other instances, the allegations were found to be "inconclusive," or the child welfare agency determined that the situation had "stabilized."

The February 2008 incident was a referral to DCFS by the Los Angeles Police Department. Mother and M. had an altercation because M. did not want to do his homework. M. became angry and threw ground coffee on the kitchen floor. Mother

responded by attacking him, scratching him several times on the head, neck and hands. M. walked to the police station to report the incident. Police observed scratches on M.'s forehead, neck and hands. Mother's version of the events was that she had blocked M.'s exit from the apartment, and M. kicked her several times in the belly and arms before she allowed him to leave. The police released M. to mother's home. As with the July incident, DCFS experienced tremendous difficulty making contact with the family following the February referral.

At the July 15, 2008, detention hearing, the juvenile court found DCFS had made a prima facie case for detaining M.

In a report prepared for the jurisdictional hearing, DCFS stated that in the months following his detention, M. had been placed in four different foster homes. The foster parents in the first three placements requested that M. be moved due to mother's actions. In the first placement, the foster mother requested that M. be re-placed due to mother's "unreasonable demands." In the second placement, the foster mother reported she was "unable to handle the stresses brought on by [mother], which included [mother's] making child abuse reports against the foster parent and calling the police when unable to reach [M.] on the phone." M. was moved from his third placement after mother called the foster family agency and stated, "I know the ages and descriptions of every single person in that home." She also stated, "I want my son out of Latino land." Mother accused the social worker, who is Catholic, of trying to "convert" her son to "leave his people." (Mother and M. are Jewish.) When DCFS advised mother that the address of the fourth placement would be kept confidential from her, mother became furious and asked her attorney to request sanctions against the County. Mother nonetheless obtained the confidential information concerning the foster home and threatened to post the information on her blog. M. reported that he was happy in his current (fourth) placement, was enjoying public school, had made friends, and would like to remain in that home. However, M. stated that he preferred to communicate with mother by e-mail rather than on the phone because phone calls with mother were often "frustrating."

DCFS reported that mother's "constant threats to DCFS have made reunification efforts extremely difficult." Mother refused individual counseling and stated that she did not have any mental health problems. Mother's visitation with M. was irregular because mother refused to attend visits at the DCFS office. Mother insisted that she was "not willing to work with any non-Jews at this point," and requested that all future visits be moved "to a quieter location IN A JEWISH SETTING and without the monitor." Mother refused to visit with M. unless he was placed in a Jewish home, but did ask that M. contact her by telephone.

Mother insisted that M. could not be returned to her home without a safety plan. Mother described M. as an individual with a violent temper who had "hit me when I had my back turned to him." However, others who had contact with M. (including his foster parents, school staff and social workers) described M. as "sweet," extremely non-imposing, articulate and laid back." The social worker's conclusions are telling: "The facts are that [mother] admits to engaging in physical altercations with her son. [Mother] blames this entirely on her son. [M.] has had no similar problems in the foster homes he has been placed in, nor has [M.] had problems getting into physical fights at school. This clearly indicates that he is not a violent child."

The jurisdictional hearing commenced on November 17, 2008. At the request of DCFS's counsel, the court dismissed three of the five allegations of the petition. M.'s counsel reported she had conducted an independent investigation as authorized by section 317, subdivision (e). Counsel interviewed M.'s foster mother, who reported that although M. had arrived at her home with "poor social skills with his peers," he had since "built a good rapport with his foster mother, his teachers at school, and he's made some new friendships." M. was also taking honors courses at school and was one of five students selected for a student leadership program. Counsel also reported that the foster mother, who was not Jewish, had "acknowledged the importance of observing [M's] religious views," and to that end had made an effort to enroll M. in a religious school and had introduced M. to a family friend who took M. to temple and celebrated important Jewish holidays with him. M. told his counsel he was doing well in the foster home and

definitely wanted to stay there, as opposed to being placed in the Orthodox Jewish home mother had independently arranged for him. Counsel stated that if M. could not be returned to mother on the date of the hearing, that he remain in his current foster home. Mother's counsel requested that M. be re-placed in a Jewish home and be allowed to attend his previous online school. The court determined that M. should remain in his current placement pending the next hearing. At the next hearing on November 24, 2008, the court authorized an unmonitored visit in mother's home over the Thanksgiving holiday weekend.

The jurisdictional hearing continued on December 3, 2008. After the relevant DCFS reports had been entered in evidence, M.'s counsel moved to dismiss the petition for failure to make a prima facie showing. (§ 350, subd. (c).) The court struck additional allegations of the petition, but indicated its tentative ruling to amend paragraph (b)(1) by interlineation. As amended, paragraph (b)(1) read: "The child has been diagnosed with various behavioral disorders which have resulted in physical confrontations between the mother and child, rendering the mo[ther] periodically unable to protect the child from risk of harm."

Mother then testified, "I have never felt in danger of my son [M.], I've never, ever felt that I could not protect myself in regard to [M.], and I've never felt that he's ever been in any danger that I could not protect him from." Mother acknowledged that she and M. had disagreements because "he's a teenager. We yell at each other. There's no danger there." When asked about statements she allegedly made about being fearful of M., mother replied, "I have never made such a statement. I said I don't want to be used as a human punching bag, is what I said. I would like a little more respect from him. That's what I said. I never said I was afraid. I am not now afraid. And I never said I was afraid of my son."

In response, County Counsel quoted mother's September 2008 e-mail to the social worker: "My son cannot return to my home without a safety plan. He hit me, when I had my back turned to him, hard. And he also hit Steven [mother's friend]. He is not safe. If he wants to continue to pretend these things did not happen, perhaps I need [to] report it

as a battery after all. Let L.A.P.D. have my photos, have them talk to the witnesses that saw the bruises, have them talk to Steven, and give the kid a lie-detector test. I do not feel safe taking him back under any conditions absent a safety plan.”

At the conclusion of testimony and argument, the court made its tentative ruling, and sustained paragraph (b)(1) of the petition, as amended. The court then stated it was terminating jurisdiction: “[A]t this particular point there are absolutely no services that these people would agree to or that would be sufficient and in the day of limited resources, mother and child deserve each other.” The court further stated that it found mother “to be the most disingenuous, full-of-baloney person I’ve ever seen in my court. I found her to be incredible. And I wish both of them good luck.”

On December 5, 2008, mother filed a notice of appeal from the “Jurisdictional & Dispositional Findings made on 12-3-08.” The ground for the appeal was that “[t]he Juvenile Court should have dismissed the section 300 petition in its entirety.”<sup>2</sup>

### **DISCUSSION**

#### **The petition was facially sufficient.**

Mother first contends that the amended and sustained language of the petition is facially insufficient to support the juvenile court’s finding of jurisdiction. We disagree.

First, mother has waived her right to object to the sufficiency of the pleading. At the jurisdictional hearing, M.’s counsel moved to dismiss the petition as it then read. Mother’s counsel joined in the motion and reserved any argument “depending on whether the court grants minor’s motion or not.” Following argument by County Counsel, M.’s counsel presented further argument, in which mother’s counsel joined. When the court announced its intention to amend the petition to conform to proof, mother did not object

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<sup>2</sup> Mother previously appealed several of the juvenile court’s orders made prior to the jurisdictional order. (*DCFS v. A.O.*, B210776.) Mother’s appointed counsel submitted a letter pursuant to *In re Sade C.* (1996) 13 Cal.4th 952. Mother submitted a responsive letter raising several issues. Mother asserted that appointed counsel was biased against her and requested new counsel. We denied the request and dismissed the appeal. We have taken judicial notice of this court’s file in B210776.

to the amendment, but instead elected to testify in order to refute the allegations of the petition. By failing to raise an objection at the time the petition was amended, mother has waived her right to challenge the sufficiency of the petition on appeal. (*In re James C.* (2002) 104 Cal.App.4th 470, 480-481; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 328.)

Mother's waiver aside, the petition as amended was sufficient to assert grounds for jurisdiction. "A challenge to the sufficiency of a petition is treated as a demurrer. [Citations.] A reviewing court construes the well-pleaded facts in favor of the petition and determines whether a basis for jurisdiction is stated. [Citations.] In the dependency scheme, the petition is examined for whether essential facts have been pleaded which establish 'at least one ground of juvenile court jurisdiction.'" (*In re James C., supra*, 104 Cal.App.4th at p. 480.)

Section 300 provides in pertinent part: "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the juvenile court: . . . (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . ." Count (b)(1) of the petition was amended to conform to proof, based on the reports the court received in evidence at the beginning of the jurisdictional hearing. As amended, count (b)(1) alleged that (1) M. had been diagnosed with various behavioral disorders; (2) the behavioral disorders resulted in a number of physical confrontations between the mother and the child, and (3) the physical confrontations rendered mother periodically unable to protect M. from the risk of harm. Suffice it to observe that a parent who fears her child, and responds to the child's behavior by engaging in mutual combat with him, is not a parent who is able to protect the child from harm.

**Substantial evidence supports the court's jurisdictional findings.**

We review the juvenile court's jurisdictional findings under the substantial evidence standard. (*In re Kristen H.* (1996) 46 Cal.App.4th 1635, 1654.) Under this standard of review, we examine the entire record in a light most favorable to the juvenile

court's findings and conclusions, and defer to the juvenile court on issues of credibility of the evidence and witnesses. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.)

Mother contends there is no substantial evidence to support the court's jurisdictional findings. Mother argues that all of M.'s "acting-out behavior was documented as having happened long before the juvenile court was involved in M.'s life." Mother cites, for example, M.'s exemplary behavior during the time he was in foster care, and mother's testimony at the jurisdictional hearing that she neither feared M. nor failed to protect him. As we noted above, the court, whose task it was to weigh the evidence, found mother's testimony "incredible." M.'s behavior during the time he was in foster care only supports DCFS's contention that it was the conflict between M. and mother that supported the court's taking jurisdiction. The family's prior history aside, the evidence believed by the juvenile court shows that twice within a six-month period, M. and mother engaged in altercations that resulted in a police response. In the February 2008 incident, M. sustained scratches on his head, neck and hands. In September 2008, mother informed DCFS that she did not feel safe having M. returned to her home "absent a safety plan."

### **DISPOSITION**

The jurisdictional order is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.